LEGAL UPDATE EMPLOYMENT LAW

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Special dismissal protection when parental leave is shared – LAG Hamm expands on section 18 (1) BEEG

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Special dismissal protection during parental leave is one of the most wide-reaching restrictions on dismissal in employment law. In accordance with section 18 (1) of the Federal Parental Allowance and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetzes, BEEG), dismissal is prohibited not just during parental leave itself, but also during the final eight weeks before parental leave commences. In practice, this extended dismissal protection is becoming increasingly more significant. There are often scenarios where parental leave is not taken all together but is divided up into multiple periods of time.

In these cases, the employer should ask themselves the question of how long the special dismissal protection extends, in particular when there is a longer period of time in between the periods of parental leave in which the employee is again working, for example part time or as an interim solution. Until now, it had not been decisively clarified whether the eight-week grace period in section 18 (1) BEEG only applies to the first period of parental leave or starts afresh before every additional parental leave period that has already been scheduled. If the dismissal protection only applies once, the employer then has room to manoeuvre and is free to make a personal decision after the first period of parental leave. Conversely, if the grace period applies before every period of parental leave, then the dismissal protection may extend over a significantly longer period of time if parental leave is planned to be taken over multiple periods. This would also include such dismissals where the notice of termination was given at a time when the employee was not even on parental leave.

In its judgment dated 5 November 2025, the Hamm Regional Labour Court (Landesarbeitsgericht, LAG) (case no.: 11 SLa 394/25) dealt with this controversial topic and clarified the area of application of the special dismissal protection for shared parental leave.

Facts of the matter

The employee had been employed by the employer since 1 July 2024. In a letter dated 23 July 2024, he requested to take his parental leave divided into a total of four periods. The first period was taken from 11 July 2024 to 10 August 2024. He was due to take a further period of parental leave from 11 November 2024 to 10 July 2025. The employee announced that he was going to work part time during this

period of parental leave. Two further periods of parental leave were planned for July and August 2025.

In a letter dated 1 August 2024, the employer agreed to the dates requested by the employee for parental leave. The employer ordinarily terminated the employee's employment contract in a letter dated 9 October 2024, approximately one month before the second period of parental leave was due to commence.

The claimant filed a claim for unfair dismissal, referring to the dismissal protection in section 18 (1) BEEG. He claimed that as he was dismissed during the eight-week grace period at the beginning of his second period of parental leave his dismissal was therefore unlawful in accordance with section 18 (1) sentence 2 no. 1 BEEG.

Ruling

After the Münster Labour Court (Arbeitsgericht, ArbG) upheld the employee's claim for unfair dismissal, the Hamm LAG rejected the employer's appeal and confirmed the unlawfulness of the dismissal. It held that the dismissal had been carried out within the eight-week grace period before the commencement of his period of parental leave and was therefore invalid in accordance with section 18 (1) sentence 2 no. 1 BEEG in conjunction with section 134 of the German Civil Code (BGB).

All the requirements for special dismissal protection were met at the time of the dismissal, in the opinion of the Hamm LAG. The claimant was entitled to parental leave and applied for it in the proper format in his letter dated 23 July 2024. However, the court held that it was only the second period of parental leave which was supposed to commence on 11 November that was in question here. The delayed application for the first period of parental leave and the fact that the claimant had applied to work part-time during the second period of parental leave is irrelevant here.

In the opinion of the Hamm LAG, the decisive factor was that the eight-week grace period in accordance withsection 18 (1) sentence 2 no. 1 BEEG did not just relate to the initial start of the parental leave, but also applies before every further specified period of parental leave. The court's interpretation was based on the wording ofsection 18 (1) sentence 2 no. 1 BEEG, which does not refer to "the first" period of parental leave but more generally refers to "a" period of parental leave.

As the claimant was dismissed within the eight-week period before commencement of his second period of parental leave, the court ruled that this was unlawful.

Comments

The decision of the Hamm LAG made it clear that the special dismissal protection extends significantly further when parental leave is divided into more than one period, than was frequently assumed to be the case in practice until now. From now on, it will no longer be possible to rely on the premise that the dismissal protection only applies once, before the commencement of the first parental leave period. Instead, the eight-week grace period applies before every subsequent period of parental leave, provided this has been bindingly agreed.

Employers must also take into consideration that the special dismissal protection for parental leave also applies when the employment contract is not subject to the general dismissal protection under the Protection Against Unfair Dismissal Act (Kündigungsschutzgesetz, KSchG). The special dismissal protection in section 18 (1) BEEG applies regardless of the

six-month waiting period required by section 1 (1) KSchG.

It will still be possible to dismiss employees in conjunction with planned parental leave but this must take place before the commencement of the eight-week grace period. This will significantly increase employers' planning and review work. Requests for parental leave should therefore be reviewed as quickly as possible to determine whether and from when the respective eight-week grace period would commence.

The Hamm LAG has allowed the appeal on a point of law to the Federal Labour Court (Bundesarbeitsgericht, BAG), so a ruling on this matter from the highest level of the judicature is awaited. Until the BAG has made a decision in this case, employers should, however, already take the decision of the Hamm LAG into consideration when drafting and terminating employment contracts and assume that the dismissal protection applies to every period of agreed parental leave where parental leave has been divided into more than one period.

If you require any further information on this topic please contact us and we will be happy to help.

Please note:
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